

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CEDRIC JONES, SR. (TDOC No. 519021),

Plaintiff,

v.

CHERYL A. BLACKBURN *et al.*,

Defendants.

)
)
)
)
)
)
)
)
)

No. 3:14-cv-01229

Judge Trauger

ORDER

Plaintiff has submitted his notice of appeal in this court.

This action was dismissed and judgment entered against the plaintiff on June 2, 2014. The plaintiff's Notice of Appeal was placed in the prison's outgoing mail on July 3, 2014 (see ECF No. 37-1). Under the prison-mailbox rule, the notice is deemed filed that day even though it was not received in this court until July 7, 2014. *Houston v. Lack*, 487 U.S. 266, 270 (1988). Nonetheless, under Rule 4 of the Federal Rules of Appellate Procedure, a notice of appeal must be filed "within 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(A). The notice in this case was filed on the thirty-first day following entry of the judgment and therefore appears to be untimely.

In addition, the plaintiff failed to submit with his notice of appeal either a motion to pursue the appeal *in forma pauperis*, in accordance with Rule 24(a) of the Federal Rules of Appellate Procedure, or the \$505 appellate filing fee. Ordinarily, the court would direct the plaintiff to cure this deficiency by submitting to this court either the filing fee or a properly completed motion to appeal *in forma pauperis*. However, because the appeal is untimely, the court finds that the appeal is not taken in good faith. The court therefore **DENIES** leave to proceed on appeal *in forma pauperis*.

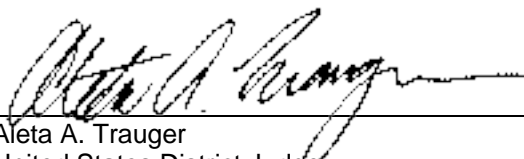
In order to pursue his appeal, the plaintiff **MUST**, within 30 days, either submit the \$505 appellate filing fee directly to this court *or*, pursuant to Rule 24(a)(5) of the appellate rules, submit a motion directly to the Sixth Circuit Court of Appeals, at 540 Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202, for leave to proceed as a pauper on appeal. *Owens v. Keeling*, 461 F.3d 763, 775

(6th Cir. 2006); *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999). The motion should comply with the requirements stated in Rule 24 of the Federal Rules of Appellate Procedure.

The plaintiff is notified that if he does not file a motion in the Sixth Circuit Court of Appeals within 30 days of receiving notice of this order and subsequently obtain leave of that court to proceed without prepayment of the appellate filing fee, or if he fails to pay the required appellate filing fee of \$505 within this same time period, the appeal may be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804.

The Clerk of Court is **DIRECTED** to furnish a copy of this Order to the Sixth Circuit Court of Appeals.

It is so **ORDERED**.


Aleta A. Trauger
United States District Judge